

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 35578 of 2002(I)

PETITIONER:

SHAJAN M.J. (EX-SEP NO. 2590987)
MULAVANA HOUSE, KADUNGAPURAM VILLAGE, PALACHODE PO
PERINTHALMANNA, MALAPPURAM DISTRICT

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
DEFENCE SECRETARY, MINISTRY OF DEFENCE,
GOVERNMENT OF INDIA, NEW DELHI-1
2. CONTROLLER OF DEFENCE (ACCOUNTS)
ALLAHABAD, U.P.
3. THE RECORD OFFICER FOR OIC RECORDS,
MADRAS REGIMENT, MADRAS REGIMENT ABHILEKH
KERYALAYA RECORDS POST BAG NI.1, WELLINGTON
(NILGIRIS), PIN 643 231

BY ADV. SMT.BINDU K NAIR - ACGSC
SRI. AJITH KRISHNAN, ADDL.CGSC
SRI.A.SUDHI VASUDEVAN, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P.NO.60078/02 IN O.P.NO.35578/02

DISMISSED

28.3.2007.

SD/- KURIAN JOSEPH, JUDGE.

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1: TRUE COPY OF THE RELEVANT PAGES OF THE CERTIFICATE OF SERVICE OF THE PETITIONER SHOWING THE DATE OF DISCHARGE.

EXT.P2 : TRUE COPY OF THE SHOW CAUSE NOTICE DT. 20.6.1990.

EXT.P3 : TRUE COPY OF REPLY DT. 25.6.90 SUBMITTED BY THE PETITIONER TO THE COMMANDING OFFICER.

EXT.P4 : TRUE COPY OF LETTER DT. 27.9.1991 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P5 : TRUE COPY OF THE APPEAL DT. 12.3.2002 SUBMITTED BY THE PETITIONER TO THE DEFENCE SECRETARY.

EXT.P6 TRUE COPY OF LETTER DT. 4.10.2002 ISSUED TO THE PETITIONER.

RESPONDENTS' EXHIBITS :-

EXT.R3(A): TRUE COPY OF THE LETTER BEARING NO.4684/DIR(PEN)/2001 ISSUED BY THE GOVT. OF INDIA, MINISTRY OF DEFENCE DT. 14.8.2001.

EXT.R3(B): TRUE COPY OF A CONFIDENTIAL STATEMENT.

EXT.R3(C): TRUE COPY OF RELEVANT PORTION OF PENSION REGULATIONS FOR THE ARMY 1961 PART I.

TGS

KURIAN JOSEPH, J.

O.P.No.35578 of 2002

Dated 28th March, 2007.

J U D G M E N T

Petitioner is aggrieved since he is denied the disability pension. It is seen from the counter affidavit that the petitioner was discharged from service on account of Generalised Tonic Clonic Seizure (343). It is seen from the medical records made available that the disability is neither attributable nor aggravated by military service. It is also seen from the counter affidavit that the petitioner pursued the appeal before the Government of India only after ten years. Learned counsel for the petitioner, faced with such a situation vehemently contended that the petitioner was directed to be given a sheltered posting and the discharge was only on account of non-availability of sheltered posting. That is an independent issue, which the petitioner should have pursued at the appropriate time. In case he was not given a sheltered posting despite request and in case the petitioner is otherwise entitled for any service benefits on account of non-availability of sheltered posting, the petitioner is free to pursue such grievance before the first respondent. Without prejudice to such liberty, this

writ petition is dismissed, holding only that the petitioner is not entitled to get disability pension.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

O.P.No.35578 of 2002 (I)

J U D G M E N T

Dated 28th March, 2007.